
State Water Resources Control Board

WATER QUALITY ORDER WQ 2024-0067-DWQ CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND ORDER

Project: U.S. Army Corps of Engineers Regional General Permit No. 41 for the Eradication and Removal of Invasive, Non-Native Plant and Algal Species from Waters of the U.S. (Project)

Project Type: Ecological Aquatic/Stream/Habitat Restoration

Program Type: Fill/Excavation

Identifiers:

WDID No: SB24038GN
USACE No: SPL-2003-01094
Place ID: 894319
Reg. Meas. ID: 456482

Applicant: U.S. Army Corps of Engineers Los Angeles District

Applicant Contact: Alexandra Ryan
Project Manager
Regulatory Division, Arizona Branch
60 South California Street, Suite 201
Ventura, CA 93001
Phone: (602) 230-6954
Email: Alexandra.Ryan@usace.army.mil

Water Board Staff: Liz Reece
Environmental Scientist
1001 I Street
Sacramento, CA 95814
Phone: (916) 323-0892
Email: Elizabeth.Reece@waterboards.ca.gov

Water Board Contact Person: If you have any questions, please contact State Water Resources Control Board (State Water Board) Staff listed above, call (916) 341-5900, or email SB-401Application@waterboards.ca.gov.

Table of Contents

I. Summary	3
II. Findings	3
III. Project Purpose and Description	4
IV. Project Location	4
V. Project Impact and Receiving Waters Information	4
VI. Conditions	4
VII. Public Notice.....	10
VIII. California Environmental Quality Act (CEQA).....	10
IX. Petitions for Reconsideration.....	11
X. Water Quality Certification	11

Attachment A: Project Map

Attachment B: Signatory Requirements

Attachment C: CEQA Addendum

I. Summary

This grant of Clean Water Act (CWA) section 401 certification (Certification) with conditions (Order) is issued at the request of the U.S. Army Corps of Engineers Los Angeles District (Corps) for Certification of Regional General Permit (RGP) 41 for the Eradication and Removal of Invasive, Non-Native Plant and Algal Species from Waters of the U.S. The request for certification was received on March 11, 2024.

II. Findings

- A. This Order is adopted pursuant to Clean Water Act section 401 and the California Porter-Cologne Water Quality Control Act (Wat. Code § 13000, et seq.). Notwithstanding any determinations made by the Corps or other federal agency, dischargers must comply with the entirety of this Order because the Order also serves as waste discharge requirements in accordance with State Water Board Water Quality General Order No. 2003-0017-DWQ. Discharges to waters of the state are prohibited except when in accordance with Water Code section 13264.
- B. In the event of any violation or threatened violation of the conditions of this Order, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under state and federal law, including the Clean Water Act and the Porter-Cologne Water Quality Control Act.
- C. In response to a suspected violation of any condition of this Order, the Water Board may require the holder of this Order to furnish, under penalty of perjury, any technical or monitoring reports the Water Boards deem appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
- D. This Order and all conditions contained herein continue to have full force and effect regardless of the expiration or revocation of any federal license or permit issued for the Project.
- E. This Order does not provide National Pollutant Discharge Elimination System (NPDES) coverage, including under any NPDES pesticide permits adopted by the Water Boards, such as the Aquatic Weed and Algae Control Permit.
- F. This Order does not authorize any act which results in the take of a threatened, endangered or candidate species, which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050-2097) or the federal Endangered Species Act (16 U.S.C. sections 1531-1544). If a “take” will result from any act authorized under this Order held by the Enrollee, the Enrollee must obtain authorization for the take prior to any construction or operation of the portion of the Project that may result in a take. The Enrollee is responsible for meeting all requirements of the applicable endangered species act for the Project authorized under this Order.

III. Project Purpose and Description

RGP 41 authorizes eradication and removal of invasive, non-native plant and algal species (invasives) from waters of the U.S., including wetlands, within the Los Angeles Corps District for the purposes of aquatic habitat enhancement and recovery. RGP 41 authorizes treatment of two classes of areas:

- Fully infested stands: Areas containing 80% or more relative or canopy cover of invasives.
- Partially infested stands: Areas containing 50% to 80% relative or canopy cover of invasives.

RGP 41 is not applicable in areas that have less than 50% relative or canopy cover of invasives. For an area to be considered a “stand” it must be at least 0.5 acre in size or completely isolated from contiguous native riparian habitat. Following flood, fire, disease, or other natural event which scours or destroys an area; the area shall be classified based on the areal coverage of invasives immediately prior to natural disturbance. In addition to the invasive and non-native plant and algal species listed in Table 1 of the Corps RGP 41, the Corps project manager assigned to each project has the opportunity to approve projects requesting to eradicate/remove invasives on the [California Invasive Species Council](https://www.cal-ipc.org/plants/inventory) (<https://www.cal-ipc.org/plants/inventory>) on a case-by-case basis.

IV. Project Location

In any jurisdictional waters of the U.S. throughout the Los Angeles Corps District, within the counties of: San Luis Obispo, Imperial, Inyo, Los Angeles, Orange, Riverside, Santa Barbara, San Bernardino, San Diego, Ventura, Mono, and Kern. A map showing the Project location is found in Attachment A of this Order.

V. Project Impact and Receiving Waters Information

Individual projects authorized under this Order may be located within the jurisdiction of Central Coast, Central Valley, Colorado River Basin, Lahontan, Los Angeles, San Diego, and Santa Ana Regional Water Quality Control Boards (collectively, Regional Water Boards). Receiving waters and groundwater potentially impacted by this Project are protected in accordance with the applicable water quality control plans (Basin Plans). For the regions, and other plans and policies which may be accessed at the [State Water Resources Control Board's Plans and Policies Web page](http://www.waterboards.ca.gov/plans_policies/) (http://www.waterboards.ca.gov/plans_policies/). The Basin Plans includes water quality standards, which consist of existing and potential beneficial uses of waters of the state, water quality objectives to protect those uses, and the state and federal antidegradation policies.

VI. Conditions

The Water Board has independently reviewed the record of the Project to analyze impacts to the environment and designated beneficial uses within the watersheds of the Project. This Order provides reasonable assurance that the Project authorized under this Order will comply with state and federally approved water quality requirements, provided that the following conditions are adhered to:

A. Administrative

1. Signatory requirements for all document submittals required by this Order are presented in Attachment B of this Order.
2. **Site Access:** The Enrollee shall grant State Water Board, Central Coast, Central Valley, Colorado River Basin, Lahontan, Los Angeles, San Diego, and Santa Ana Regional Water Board staff or an authorized representative (including an authorized contractor acting as a Water Board representative), upon presentation of credentials and other documents as may be required by law, permission to:
 - a. Enter upon the Project or compensatory mitigation site(s) premises where a regulated facility or activity is located or conducted, or where records are kept.
 - b. Have access to and copy any records that are kept and are relevant to the Project or the requirements of this Order.
 - c. Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order.
 - d. Sample or monitor for the purpose of assuring Order compliance.
3. The Enrollee shall be responsible for work conducted by its consultants, contractors, and any subcontractors. A copy of this Order shall be provided to any consultants, contractors, and subcontractors working on this Project. Copies of this Order shall remain at the Project site for the duration of this Order. All personnel performing work on the Project shall be familiar with the content of this Order and its posted location at the Project site.

B. Reporting and Notification Requirements

The following section details the reporting and notification types and timing of submittals. Requirements for the content of these reporting and notification types are detailed in the Corps' RGP 41.

1. Project Enrollment and Fee Requirements

- a. As early as feasible but at least 21 days prior to proposed project commencement, prospective permittees shall provide a hardcopy of the Corps' required Pre-Construction Notification (PCN) package, including identification of the species targeted for removal, to the State Water Board and the appropriate Regional Water Quality Control Board (Regional Water Board).
 - Regional Water Board and State Water Board contact information is in the [Water Boards' CWA 401 Program Staff Directory](https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/wqc_staffdir.pdf) (https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/wqc_staffdir.pdf) on the State Water Board's webpage.

- A map of Regional Water Board boundaries is also on the [State Water Board's webpage](https://www.waterboards.ca.gov/waterboards_map.html) (https://www.waterboards.ca.gov/waterboards_map.html).
 - b. **Response from the Regional Water Board:** Work may not commence until verification of compliance with RGP 41 and this Order, including fee payment, is confirmed by the affected Regional Water Board, or thirty days have passed since the Regional Water Board received a complete notification package.
2. **Project Reporting Requirements:** For all enrolled projects, the Enrollee must provide the applicable Regional Water Board copies of all correspondence and reports that are submitted to the Corps to satisfy the requirements of RGP 41.

C. **Conditional Notifications and Reports:**

The following notifications and reports are required as appropriate.

1. **Accidental Discharges of Hazardous Materials¹:**

Following an accidental discharge of a reportable quantity of a hazardous material, sewage, or an unknown material, the following applies (Wat. Code, § 13271):

- a. As soon as (A) Enrollee has knowledge of the discharge or noncompliance, (B) notification is possible, and (C) notification can be provided without substantially impeding cleanup or other emergency measures:
 - i. First call – 911 (to notify local response agency)
 - ii. Then call – Office of Emergency Services (OES) State Warning Center at: (800) 852-7550 or (916) 845-8911
 - iii. Lastly, follow the required OES procedures as set forth in the [Office of Emergency Services' Accidental Discharge Notification Web Page](https://www.caloes.ca.gov/office-of-the-director/operations/response-operations/fire-rescue/hazardous-materials/spill-release-reporting/) (<https://www.caloes.ca.gov/office-of-the-director/operations/response-operations/fire-rescue/hazardous-materials/spill-release-reporting/>)

¹ "Hazardous material" means any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment. "Hazardous materials" include, but are not limited to, hazardous substances, hazardous waste, and any material that a handler or the administering agency has a reasonable basis for believing that it would be injurious to the health and safety of persons or harmful to the environment if released into the workplace or the environment. (Health & Saf. Code, § 25501.)

- b. Following notification to OES, the Enrollee shall notify the Regional Water Board within 24 hours. Notification may be delivered via written notice, email, or other verifiable means.
- c. Within 5 business days of notification to the Regional Water Board, the Enrollee must submit an Accidental Discharge of Hazardous Material Report.

2. Violation of Water Quality Standards

- a. The Enrollee shall notify the Regional Water Board of any event causing a violation of water quality standards. Notification may be delivered via written notice, email, or other verifiable means.
- b. This notification must be followed within 3 business days by submission of a Violation of Water Quality Standards Report.

3. Transfer of Property Ownership

This Order is not transferable in its entirety or in part to any person or organization except after notice to the Regional Water Board in accordance with the following terms:

- a. The Enrollee must notify the Regional Water Board of any change in ownership or interest in ownership of the Project area by submitting a Transfer of Property Ownership Report. The Enrollee and purchaser must sign and date the notification and provide such notification to the Water Board at least 10 days prior to the transfer of ownership. The purchaser must also submit a written request to the Regional Water Board to be named as the enrollee in a revised order.
- b. Until such time as this Order has been modified to name the purchaser as the enrollee, the Enrollee shall continue to be responsible for all requirements set forth in this Order.

D. Water Quality Monitoring

1. General

If surface water is present, continuous visual monitoring shall be conducted during active construction to detect accidental discharge of construction related pollutants (e.g., oil and grease, turbidity plume, uncured concrete).

2. Accidental Discharges/Noncompliance

Upon occurrence of an accidental discharge, the Enrollee shall determine whether the discharge includes hazardous materials or will cause or contribute to an exceedance of water quality objectives, and if so, notify the Regional Water Board in accordance with Conditional Notifications and Reports section VI.C.1. Regional Water Board staff may require additional

water quality monitoring based on the discharge constituents and/or related water quality objectives and beneficial uses.

E. Aquatic Weed Control Permit (Water Quality Order No. 2013-0002-DWQ)

Permitted activities may include application of algaecides and herbicides to invasive plants in waters of the U.S. Discharges of residual algaecides and/or aquatic herbicides and their degradation byproducts to waters of the U.S. from algae and aquatic weed control applications must comply with [Water Quality Order No. 2013-0002-DWQ \(General Permit No. CAG990005\)](#)

(https://waterboards.ca.gov/water_issues/programs/npdes/pesticides/docs/weedcontrol/weed-control.pdf), Statewide General NPDES Permit for Residual Aquatic Pesticide Discharges to Waters of the United States from Algae and Aquatic Weed Control Applications, which is available on the State Water Board's webpage, or any subsequent reissuance of the permit.

F. General Conditions

1. This action is subject to remand, amendment, or vacatur by judicial or administrative adjudication, including review pursuant to Water Code section 13330, and California Code of Regulations, Title 23, chapter 28, Article 6 commencing with section 3867.
2. This Order is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license, unless the pertinent certification application was filed pursuant to subsection 3855(b) of chapter 28, Title 23 of the California Code of Regulations, and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. **Fees:** Enrollment under this Order is conditioned upon total payment of any fee required under title 23 of the California Code of Regulations. The application fee amount for individual projects authorized under this Order is determined as required by California Code of Regulations, title 23, sections 3833(b)(3) and 2200(a)(3). A dredge or fill fee calculator is available online at https://waterboards.ca.gov/water_issues/programs/cwa401/#fees. Note that fees are periodically adjusted. Dischargers should confirm the correct fee amount prior to submitting payment.

G. General Compliance

1. Permitted actions must not cause a violation of any applicable water quality standards, including impairment of designated beneficial uses for receiving waters as adopted in the Basin Plans by any applicable Regional Water Board or any applicable Water Board water quality control plan or policy. The source of any such discharge must be eliminated as soon as practicable.
2. The Enrollee must, at all times, fully comply with engineering plans, specifications, and technical reports submitted with application materials.

Water Code section 13264 prohibits any discharge that is not specifically authorized in this Order.

3. Permitted activities must be designed to first avoid and then minimize adverse impacts on aquatic resources in a manner than is consistent with the conditions of RGP 41. Compensatory mitigation may be required to offset any remaining unavoidable adverse impacts to aquatic resources. If the Enrollee is required to provide compensatory mitigation, the compensatory mitigation requirements shall be set forth in the NOA.
4. No permanent impacts to any waters of the state, including waters of the U.S., are permitted under this Order. All temporary disturbance to waters, associated riparian areas and any areas where the disturbance may indirectly cause impacts to waters, must be established to prevent erosion and encourage regrowth of desirable native plant species.
5. Any native riparian trees that are removed must be replaced in accordance with conditions of RGP 41.
6. Site restoration should commence immediately upon the end of the completion of invasive species removal activities.

H. Construction Conditions

1. Excavated invasive plant materials stockpiled at sites known to experience flash flooding outside the flood season (the flood season is November 15 to April 15) shall be removed within 15 days of the initial creation of the stockpile in order to contain the potential spread of invasive plant material in such flash-flood prone areas. Stockpiling of excavated invasive plant materials is prohibited during the flood season.
2. Any discharge by itself or in combination with other discharges shall not have a significant cumulative effect or degrade water quality or beneficial uses.
3. Activity associated with eradication and removal of invasive, non-native plant and algal species shall not destabilize the channel or bed of receiving water.
4. Discharges shall not include substances in concentrations toxic to human, plant, animal, or aquatic life that produce detrimental physiological responses.
5. Discharges shall not include waste classified as “hazardous” or “designated” as defined in Title 22 California Code of Regulations, Section 66261 and California Water Code Section 13173.
6. The Enrollee must, at all times, maintain appropriate types and sufficient quantities of materials on-site to contain any spill or inadvertent release of materials that may cause a condition of pollution or nuisance if the materials reach waters of the state.
7. Fueling, lubrication, maintenance, storage, and staging of vehicles and equipment must not result in a discharge to any waters of the state, and shall be located outside of waters of the state in areas where accidental spills are not likely to enter or affect such waters.

8. Materials and debris from all work areas shall be removed following completion of the project.
9. The Enrollee must implement all necessary BMPs to control erosion and runoff from areas associated with permitted projects. The Enrollee must restore all areas of temporary impacts and all other areas of temporary disturbance which could result in a discharge or a threatened discharge to waters of the state. Restoration must include grading of disturbed areas to pre-project contours and revegetation with native species.

VII. Public Notice

The Water Board complied with its applicable public notice requirements. The State Water Board provided public notice of the application pursuant to California Code of Regulations, title 23, section 3858 from April 10, 2024, to May 28, 2024. On May 28, the State Water Board received one comment letter from Heal the Bay regarding the Project during the 45-day comment period.

Heal the Bay's comments focused on eligibility confirmation before enrollment, requiring the Corps to conduct an updated environmental impact statement, potential channel and bed destabilization, water quality monitoring, and violation reporting. Staff accepted Heal the Bay's proposed minor revisions to conditions related to violation reporting, which updates the requirement to be within 24 hours in all cases, and channel/bed destabilization, which makes clear that the prohibition applies to the activity, not only the discharge. Staff confirmed the RGP 41 eligibility requirements with the Corps, but otherwise did not make Heal the Bay's requested change related to eligibility confirmation that the certification remove the ability for the applicant to move forward with the project if 30 days have passed after the submission of a complete application for enrollment. This provision only applies if an application is complete and, in such cases, there would be no need for additional review time. There were no revisions made to require the Corps to conduct an updated Environmental Impact Statement. The Water Board confirmed that the Corps conducted tribal outreach pursuant to section 106 of the National Historic Preservation Act. Only minor technical changes have been made to RGP 41. As explained in Section VIII and Attachment C, the preparation of a subsequent negative declaration is not required. No revisions were made to water quality monitoring requirements. The Order includes standard conditions for monitoring water quality parameters including visual turbidity monitoring and requires herbicide applications to comply with the state's Aquatic Weed and Algae Control Permit if applicable.

VIII. California Environmental Quality Act (CEQA)

An addendum (Attachment C) to the Final Negative Declaration for RGP 41 has been prepared by the State Water Board. This Addendum 4 identifies minor technical changes and additions to the Final Negative Declaration, which do not require the preparation of a subsequent negative declaration (CCR §§ 15162 and 15164(b)). This document was prepared in accordance with

CEQA, Public Resources Code section 21000 et seq., and the state's CEQA Guidelines, CCR section 15000 et seq.

IX. Petitions for Reconsideration

Any person aggrieved by the issuance of this Order may petition the Water Board to reconsider this Order in accordance with California Code of Regulations, title 23, section 3867. A petition for reconsideration must be submitted in writing and received within 30 calendar days of the issuance of this Order.

X. Water Quality Certification

I hereby issue this water quality certification for the U.S. Army Corps of Engineers' Regional General Permit No. 41 for Eradication and Removal of Invasive, Non-Native Plant and Algal Species from Waters of the U.S., State Water Board I.D. No. SB24038GN, certifying that as long as all of the conditions listed in this Order are met, any discharge from the referenced Project will comply with the applicable provisions of Clean Water Act sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards).

This discharge is also regulated pursuant to Water Board Water Quality Order No. 2003-0017-DWQ which authorizes this Order to serve as Waste Discharge Requirements pursuant to the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.).

Authorization is contingent on: (a) compliance with the conditions of this Order and the attachments to this Order; and (b) compliance with all applicable requirements of Statewide Water Quality Control Plans and Policies, and the Regional Water Boards' Water Quality Control Plans.

Date

Phillip Crader  Digitally signed by Phillip Crader
Date: 2024.07.22 09:55:11 -07'00'

Phillip Crader, Deputy Director
Division of Water Quality